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# Report of the Special Rapporteur on the independence of judges and lawyers

## Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the independence of judges and lawyers, prepared pursuant to Council resolutions 35/11 and 26/7. Judicial councils play an essential role in guaranteeing the independence and the autonomy of the judiciary. The underlying rationale for their creation is the need to insulate the judiciary and judicial career processes from external political pressure. In addition to their primary function of safeguarding judicial independence, a growing number of judicial councils have been entrusted with far-reaching powers in the area of promoting the efficiency and quality of justice, and of rationalizing the administration of justice, court management and budgeting.

In the report, the Special Rapporteur shows that there is no one-size-fits-all model of judicial council. Each judicial governing body originates from a legal system with distinct historical, cultural and social roots; the specific role of each body varies from one country to the other. The Special Rapporteur shows that the number of judicial councils has increased greatly in recent decades, and estimates that, to date, over 70 per cent of the countries in the world have some form of judicial council. This is an area lacking in statistical data at the global level, making it challenging to assess global trends.

The Special Rapporteur also shows that, despite the increase in the number of judicial councils in all regions of the world, there is a lack of international legal standards at the international level specifically devoted to the role, composition and functions of judicial councils. The Basic Principles on the Independence of the Judiciary do not include any provision specifically devoted to judicial councils. The most comprehensive efforts to develop minimum standards relating to the creation, membership and role of judicial councils have been undertaken in Europe, under the aegis of the Council of Europe.

In the light of the existing international and regional standards, and based on the contributions received from States and non-State actors, the Special Rapporteur offers some recommendations relating to the establishment, composition and functions of judicial councils. These recommendations do not purport to identify an "ideal model" of national judicial council, but rather seek to define common principles, general trends and good practices for ensuring the independence of such bodies, where they exist, and their effectiveness in the discharge of their functions as guarantors of judicial independence.

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# Report of the Special Rapporteur on the independence of judges and lawyers

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# I. Introduction

1. This is the second report submitted by the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, pursuant to Human Rights Council resolution 35/11.

2. The present report focuses on the role that judicial councils and/or other bodies independent from the legislative and executive branches of powers play in ensuring the independence of the judiciary.

3. In preparing this report, the Special Rapporteur called for contributions from States, international and regional human rights mechanisms, national human rights institutions, judicial councils and civil society. The Special Rapporteur requested information on the existence of a national body or mechanism in charge of guaranteeing judicial independence; the composition of this body or mechanism and the procedure for the appointment of its members; and the competences of this body or mechanism in relation to all decisions relating to the careers of judges (selection, appointment, promotion, suspension and dismissal).

4. At the time of writing the present report, the Special Rapporteur has received a total of 77 responses. The Special Rapporteur wishes to convey his sincerest gratitude to all States and non-State actors that provided contributions for the preparation of the report. The annex contains a full list of respondents. All submissions are available on the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

5. The Special Rapporteur would like to thank the Human Rights Clinic of the Human Rights Research and Education Centre of the University of Ottawa for its continuous support in the research and drafting of the present report.

6. The Special Rapporteur also expresses his appreciation for the suggestions received by a group of 30 organizations of the Americas in a meeting organized in Lima on 13 April 2018 by the Due Process of Law Foundation.

# II. Overview

7. The independence of the judiciary is an essential component of the right to a fair trial and the rule of law. The requirement of independence and impartiality of judges is not a prerogative or privilege granted in their own interest, but is justified by the need to enable judges to fulfil their role as guardians of the rule of law and of the human rights and fundamental freedoms of the people. As such, the independence of the judiciary should be regarded by every citizen as a guarantee of truth, freedom, respect for human rights and impartial justice free from external influence.

8. The independence of the judiciary is a corollary of the democratic principle of separation of powers, according to which the executive, the legislature and the judiciary constitute three separate and independent branches of Government. According to this principle, different organs of the State have exclusive and specific responsibilities, and it is not permissible for any branch of power to interfere in the others' spheres of control.

9. International standards provide that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary, and to adopt all appropriate measures to ensure that judges can decide matters before them impartially and without any improper influences, pressures or interferences.

10. In order to guarantee judicial independence, some countries created self-governing judicial bodies, such as judicial councils, to protect and promote the independence and the autonomy of the judiciary. The underlying rationale for their creation was the need to insulate the judiciary and judicial career processes from external political pressure, mainly from the executive branch of power.

11. Judicial councils exist in both civil and common law countries, but they are a particularly prominent feature of legal cultures with a civil law tradition. The first High

Council of the Judiciary (Conseil Supérieur de la Magistrature) was established in France in 1883; it became an autonomous constitutional organ in 1946, but only a minority of its members (4 out of 12) were magistrates elected directly by their peers. Several other Western European countries followed suit in establishing oversight councils seeking to ensure judicial independence. In 1948, the High Council of the Judiciary of Italy became the first judicial council to fully insulate the judiciary from any external interference.

12. There is no one-size-fits-all model of judicial council. Each judicial governing body originates from a legal system with distinct historical, cultural and social roots. Nevertheless, all councils must be governed by the same general principles of the independence of the judiciary and division of powers between branches of Government.

13. Countries have followed two main trends in creating judicial councils, depending on whether their responsibilities are primarily focused on judicial careers or management of court operations. In 1999, a study on different judicial councils in the European Union distinguished between a southern European model, in which the body was constitutionally rooted and only fulfilled primary functions in safeguarding judicial independence (for instance, with regard to the appointment of, and disciplinary proceedings against, judges), and a northern European model, in which the council had far-reaching powers in the area of administration, court management and budgeting.[1] While countries in Western Europe follow this distinction fairly closely, other countries around the world have tended to borrow aspects from both models. The array of powers and responsibilities granted to a judicial council has become highly country specific and often constitutes variations of these two models.[2]

14. In recent decades, the number of judicial councils has increased greatly in Central and Eastern Europe, Latin America, Africa and the Middle East, and it is estimated that, to date, over 70 per cent of the countries in the world have some form of judicial council. However, this is an area lacking in statistical data at the global level, making it challenging to assess global trends.

15. All judicial councils share common experiences and challenges and are governed by the same general principles. As key judicial bodies, judicial councils are supposed to play a pivotal role in ensuring judicial independence. They are supposed to function as intermediaries between Government and the judiciary, and operate autonomously within the judicial systems of their respective jurisdictions to guarantee, inter alia, the maintenance of the rule of law and the protection and promotion of human rights and fundamental freedoms.

16. Each judicial governing body has a specific role that varies from one country to the next, in accordance with the specific problems that each establishment is supposed to address. In some countries, the main challenge is to counter executive, legislative or political party domination of the judiciary; in others, the main function of the judicial council is to limit the oversight function of the Supreme Court, which is perceived to have excessive control over lower court judges. In another group of countries, judicial councils are established to improve the effectiveness and efficiency of the judiciary by transferring the management of administrative matters from the judiciary to a body that is independent from the court system.[3]

17. Since the establishment of the mandate, several Special Rapporteurs have highlighted the crucial role that judicial councils play in guaranteeing the independence of the judiciary, and recommended that member States consider establishing an independent body in charge of the selection and discipline of judges, and adopt appropriate measures to

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[1] W. Voermans and Pim Albers, *Councils for the Judiciary in EU Countries*, European Commission for the Efficiency of Justice (Strasbourg, Council of Europe, 2003), p. 12.

[2] Violaine Autheman and Sandra Elena, *Global Best Practices: Judicial Councils — Lessons Learned from Europe and Latin America*, Rule of Law White Paper Series, No. 2 (Arlington, International Foundation for Electoral Systems, April 2004), pp. 5–6.

[3] United States Agency for International Development, Office of Democracy and Governance, *Guidance for Promoting Judicial Independence and Impartiality — Revised Edition* (Washington, D.C., January 2002), p. 16.

guarantee a plural and balanced composition (see A/HRC/11/41, paras. 24–30 and 97). Similar considerations have been included in previous reports on judicial accountability (see A/HRC/26/32, paras. 88–93 and 125–126) and continuing education for judges (see A/HRC/14/26, para. 53), as well as in a number of country mission reports (e.g. A/HRC/35/31/Add.1, A/HRC/32/34/Add.1, A/HRC/23/43/Add.3 and A/HRC/23/43/Add.1).

18. However, the creation of a judicial council is not in itself sufficient to ensure judicial independence and promote judicial accountability. In order to enable a council to play its role of guarantor of judicial independence, it is important to ensure that it is granted extensive powers in all aspects relating to judicial careers, and that its institutional structure and composition contribute to the insulation of the judiciary and judicial career processes from external political pressure.

19. In a number of mission reports, the Special Rapporteur and his predecessors identified serious flaws in the structure, composition and responsibilities of judicial councils that undermined their ability to promote judicial independence (see, for example, the reports on Poland (A/HRC/38/38/Add.1, paras. 63–70 and 85); Guinea Bissau (A/HRC/32/34/Add.1, paras. 11, 35–36 and 110); Maldives (A/HRC/23/43/Add.3, paras. 44–47 and 99); and El Salvador (A/HRC/23/43/Add.1, paras. 49, 51–55, 61–63, 113 and 119)). In these and other cases, the creation of a judicial council has not led to substantial improvements in the insulation of the judiciary from political control and interferences.

20. In the present report, the Special Rapporteur assesses existing international and regional standards relating to judicial councils or equivalent independent and autonomous bodies established at the national level to promote and strengthen the independence of the judiciary. The aim is not to identify an "ideal model" of judicial council or to provide a comprehensive analysis of the effectiveness of these institutions in securing judicial independence and accountability. Based on the contributions received, the report seeks to define common principles for ensuring the independence of such bodies, where they exist, and to identify good practices relating to their mission, composition and functions.

# III. Legal standards

## A. International standards

21. The Basic Principles on the Independence of the Judiciary list the measures that States are required to adopt to guarantee the independence of the judiciary at the national level. They require that the independence of the judiciary be guaranteed by the State and enshrined in the Constitution or the law of the country, and reaffirm that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary (principle 1). They also include specific provisions concerning the status of judges, including their independence and impartiality (principles 2 and 4), qualification and appointment (principle 10), conditions of service and remuneration (principle 11), security of tenure (principle 12), promotion (principle 13), assignment of cases (principle 14) and disciplinary proceedings against judges (principles 17 to 20). However, the Basic Principles do not include any specific provision concerning the establishment of judicial councils.

22. At the global level, only the revised Universal Charter of the Judge provides for the establishment of "a Council for the Judiciary, or another equivalent body … save in countries where this independence is traditionally ensured by other means" and includes specific provisions relating to the composition and competences of this body in the fields of recruitment, training, appointment, promotion and discipline of judges.[4]

[4] Universal Charter of the Judge, approved by the Central Council of the International Association of Judges in Taipei, Taiwan Province of China on 17 November 1999 and updated in Santiago on 14 November 2017.

## B. Regional standards

23. The general functions, composition and core competencies of judicial councils are dealt with in a number of principles, guidelines and recommendations adopted by associations or summits of judges at the regional level. Some of these instruments only focus on judicial appointments,[5] while others provide a more comprehensive analysis of the role judicial councils should play in securing the independence and autonomy of the judiciary.[6]

24. The most comprehensive efforts to develop minimum standards relating to the creation, membership and role of judicial councils have been undertaken in Europe, under the aegis of the Council of Europe. Initially, these efforts focused on the need to ensure that the selection and career development of judges be made with "the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary".[7]

25. These instruments have now been supplemented by more detailed standards relating to the composition and functions of judicial councils. In 2007, the Consultative Council of European Judges adopted, at the request of the Committee of Ministers of the Council of Europe, an opinion on the council for the judiciary at the service of society. This opinion provides a comprehensive analysis of the composition and functions of judicial councils.[8] The Magna Carta of Judges, adopted by the Consultative Council in 2010, also recommends the establishment of "a Council for the Judiciary or another specific body, itself independent from legislative and executive powers, endowed with broad competences for all questions concerning [the status of judges] as well as the organisation, the functioning and the image of judicial institutions".[9] In 2010, the Committee of Ministers of the Council of Europe adopted a new recommendation on judicial independence, which included a specific chapter on councils for the judiciary, as well as detailed provisions on their authority and functions.[10]

26. In 2013, the Inter-American Commission on Human Rights published a report on the guarantees for the independence of justice operators in the Americas, which include a specific section on the organs of governance and administration of such operators.[11] The Commission noted that, although no provision of international law requires the creation of such a body, the establishment of independent bodies charged with the administration and

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[5] See the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA [Law Association for Asia and the Pacific] Region, adopted at the 6th Conference of Chief Justices of Asia and the Pacific, held in Beijing on 19 August 1995; and the Commonwealth's Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence, adopted on 19 June 1998.

[6] See the Istanbul Declaration on Transparency in the Judicial Process, adopted by the Conference of Chief Justices and Senior Justices of the Asian Region, held in Istanbul from 20 to 22 November 2013, and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia: Judicial Administration, Selection and Accountability, 2010 (hereinafter, "Kyiv Recommendations on Judicial Independence").

[7] See Council of Europe, European Charter on the Statute of Judges, 1998, art. 1.3. See also the Council of Europe Committee of Ministers, recommendation No. R (94) 12 on the independence, efficiency and role of judges, 1994, principle 1, para. 2 (c).

[8] Consultative Council of European Judges, opinion No. 10 (2007) on the council for the judiciary at the service of society, 23 November 2007 (hereinafter, "opinion No. 10 of the Consultative Council of European Judges").

[9] See Magna Carta of Judges (Fundamental Principles), adopted at the 11th plenary meeting of the Consultative Council of European Judges, held in Strasbourg, France, from 17 to 19 November 2010, para. 13.

[10] Council of Europe Committee of Ministers, recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, 2010.

[11] See Inter-American Commission on Human Rights, "Guarantees for the independence of justice operators: towards strengthening access to justice and the rule of law in the Americas" (December 2013), paras. 240–248.

governance of the judiciary is "a best practice to strengthen its independence", and urged those States that do not have such bodies "to create them and endow them with the guarantees that enable them to perform each of their assigned functions independently", in the manner prescribed by international law standards (para. 248).

# IV. Judicial councils: general principles

## A. Definition

27. There is no generally agreed definition of a judicial council. In its recommendation on judicial independence adopted in 2010, the Committee of Ministers defines "councils for the judiciary" as "independent bodies ... that seek to safeguard the independence of the judiciary and of individual judges and thereby to promote the efficient functioning of the judicial system" (para. 26). The Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia define "judicial councils" as "bodies entrusted with specific tasks of judicial administration and independent competences in order to guarantee judicial independence" (para. 2). Other legal instruments do not provide a definition of what constitutes a judicial council, and simply focus on the necessary requirements that such institutions must possess, namely independence from the executive and legislative branches of power and a large proportion of its membership made up of members of the judiciary.

28. The diversity of legal systems is reflected in the choice made by the legislator on the names of the authorities entrusted with the protection of judicial independence at the national level. In civil law countries, these bodies are generally referred to as a "judicial council",[12] "council for the judiciary",[13] "supreme/superior judicial council"[14] or "high council of the judiciary".[15] In common law countries, they are generally referred to as a "judicial services commission". However, other terms are used, such as "judicial and legal service commission",[16] "council of administrative affairs of the judiciary",[17] "general council of the judiciary"[18] and "judicial and bar council".[19] In some cases, the name of the body depends on the specific functions entrusted to it (e.g. judicial appointment council, commission or board,[20] "judges' examination committee",[21] "judges proposals board",[22] "judges personnel committee"[23] and "judicial inquiry commission".[24])

29. In the present report, the Special Rapporteur uses the term "judicial council" to refer to the various independent and autonomous bodies established at the national level to guarantee the independence of individual judges and the judiciary as a whole.

30. In addition to their responsibilities for safeguarding the independence of judges, some judicial councils are also responsible for public prosecutors.[25] The present report only focuses on the role and functions of judicial councils as regards judges. Questions concerning the status of prosecutors, including their appointment, promotion, capacity-building and discipline, as well as the organization and functioning of national prosecutorial councils or equivalent independent bodies, are dealt with in a previous report specifically

[12] Costa Rica, Hungary, Jordan, Nepal and Slovakia.
[13] Bolivia (Plurinational State of), El Salvador and Latvia.
[14] Algeria, Andorra, Greece and Togo.
[15] Belgium, Georgia, Italy and Serbia.
[16] Mauritius.
[17] Oman.
[18] Mongolia.
[19] Philippines.
[20] Denmark, Ireland, Japan, Malta and Norway.
[21] Estonia and Lithuania.
[22] Sweden.
[23] Republic of Korea.
[24] Liberia.
[25] Bosnia and Herzegovina, Bulgaria, Italy and Turkey.

devoted to the independence and impartiality of prosecutors and prosecution services (A/HRC/20/19).

31. Not all the States that responded to the questionnaire have established a national body or mechanism in charge of selecting, appointing, promoting, transferring, suspending or removing judges. Some of those respondents stated that those functions were carried out by other authorities in their countries.[26]

## B. General mission

32. The responses to the questionnaire show that the main objective of most judicial councils is to safeguard the independence of the judicial system and the independence of individual judges.

33. Judicial councils also have another general objective, namely to promote the efficiency and quality of justice. This objective is closely linked to the strengthening of judicial independence, since the transfer of administrative functions to a judicial council independent of the executive power limits external interference in the administration of justice.

34. In many European countries, including those in which judicial councils originated, the improvement of administrative management was not included in the functions of these bodies and remained in the hands of the Ministry of Justice. On the contrary, the improvement of administrative management and control over the judicial budget and personnel constituted the main reason for the establishment of judicial councils in some northern European countries (e.g. Denmark and Sweden), as well as in a number of Latin American countries.[27]

35. The third objective that the establishment of a judicial council aims to achieve is that of striking a balance between judicial independence and self-administration, on the one hand, and the accountability of judges and the judiciary, on the other. Regional standards on the independence of the judiciary recommend that judicial councils or similar independent bodies be entrusted with responsibility for holding judges accountable for their conduct. This competence is reflected in many of the responses to the questionnaire.[28]

36. In order to avoid the excessive concentration of powers in one judicial body or the perception of corporatism, some regional standards specifically recommend the establishment of different independent bodies competent for specific aspects of judicial administration — such as selection, promotion and training of judges, discipline, professional evaluation and budget — without subjecting them to the control of a single institution or authority.[29] The existence of different self-governing institutions in charge of different aspects of a judicial career was highlighted in a number of the contributions received.[30]

37. The Basic Principles on the Independence of the Judiciary require States to allocate adequate resources to the judiciary in order to enable it to function properly (principle 7). The same principle applies, mutatis mutandis, to judicial councils. While they are not per se judicial authorities and do not exercise judicial functions, their function as a watchdog regarding the autonomy and independence of the judiciary require that judicial councils are independent and impartial from the executive and legislative branches of powers. For those reasons, judicial councils should be provided with adequate human and financial resources to perform their functions independently and autonomously. In particular, they should have their own premises, a secretariat and a sufficient number of qualified staff to carry out their functions.

[26] Czechia and Germany.
[27] Autheman and Elena, *Global Best Practices*, p. 3.
[28] E.g. Azerbaijan, Bahrain, Croatia, Georgia, Mauritania, Morocco, Portugal and Togo.
[29] See the Kyiv Recommendations on Judicial Independence, para. 2.
[30] E.g. Jordan, Latvia and Malta.

38. In most countries that responded to the questionnaire, the judicial council has its own budget and dedicated personnel. In a few cases, human and financial resources necessary to the judicial council to perform its functions are provided by the court administration[31] or the Ministry of Justice.[32]

## C. Establishment

39. A number of human rights mechanisms and bodies — including the Special Rapporteur on the independence of judges and lawyers and the Inter-American Commission on Human Rights (see paras. 17 and 26 above) — have recommended the establishment of an independent judicial council.

40. The position of the European Commission for Democracy through Law (Venice Commission) is more nuanced. In an opinion on judicial appointments, the Commission noted that a variety of different systems for judicial appointment exists in Europe, and that there is not a single model that would apply to all countries. In older democracies, the executive power has sometimes a decisive influence on judicial appointments. These systems have worked well in practice and have allowed for an independent judiciary because the executive is restrained by legal culture and traditions. New democracies, however, have not had a chance to develop these traditions. At least in these countries, the Commission recommends that States that have not yet done so consider the establishment of an independent judicial council to prevent political abuse in the appointment of the judiciary.[33]

41. In order to guarantee their independence from the executive and legislative powers and ensure effective self-governance to the judiciary, some — but not all — regional standards recommend that judicial councils "be positioned at the constitutional level in those countries having a written Constitution, or in the equivalent basic law or constitutional instrument in other countries".[34]

42. Establishing a judicial council through a constitutional provision emphasizes the vital role that such a council plays as a guarantor of judicial independence, especially in countries that are in the process of consolidating democratic institutions. A constitutional provision would grant the newly-created institution "the legitimacy of constitutional recognition and may help insulate it from interferences from the executive, legislative or judiciary through legislation, decrees or rulings".[35] The Constitution should include provisions relating to the setting up of such body, its composition and the definition of its functions, as well as its autonomy vis-à-vis the executive and legislative branches of power. Considering that judicial councils do not belong to the hierarchy of the court system and cannot as such decide on the merits of the cases, the Constitution should also regulate relations with the courts, and especially with judges.[36]

43. In the majority of States that responded to the questionnaire, the Constitution contains specific provisions concerning the establishment of a judicial council.[37] In some cases, the composition, powers and autonomy of the council are regulated by ordinary law.[38]

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[31] Norway.

[32] Mauritania.

[33] See Venice Commission, opinion No. 403/2006 on judicial appointments, 22 June 2007, paras. 44–48.

[34] See opinion No. 10 of the Consultative Council of European Judges, para. 11.

[35] Autheman and Elena, *Global Best Practices*, p. 7.

[36] See opinion No. 10 of the Consultative Council of European Judges, para. 13.

[37] Argentina, Bahrain, El Salvador, Mauritania, Mongolia, Nepal, Poland, Slovenia and Turkey.

[38] Belgium, Jordan, Montenegro, Norway, Paraguay and Sweden.

## V. Duties and responsibilities of judicial councils

44. Some regional standards list the tasks that judicial councils may perform, alone or in cooperation with other bodies.[39] The Inter-American Commission on Human Rights considers that the functions entrusted to judicial councils should be secured by law, and include administration, selection, appointment and the disciplinary system.[40] Those tasks are intimately linked to the constitutional role of a judicial council as guarantor of the independence of the judiciary, and should therefore be set out in the Constitution, or in the equivalent basic law or constitutional instrument (see paragraph 41 above).

45. Regional instruments recommend that the different functions of a judicial council — such as appointment of judges, disciplinary matters and training — be attributed to various branches of such a council[41] or to different independent bodies competent for specific aspects of judicial administration.[42] The composition of these branches or bodies should reflect the type of tasks and the way they should be carried out.

46. Some of those competences, for instance the appointment and promotion of judges, are exercised by the majority of judicial councils, whereas other functions, for example those relating to management and budget matters, are attributed only to a limited number of councils. Overall, judicial councils should have a wide range of competencies to better protect and promote judicial independence and the efficient administration of justice.

47. In this section, the Special Rapporteur only focuses on the main competences carried out by judicial councils in relation to (a) the selection, appointment and promotion of judges, (b) court administration and budget control and (c) disciplinary proceedings and accountability.

### A. Selection, appointment and promotion of judges

48. The most widely recognized function of judicial councils is their role in the appointment of judges. In order to guarantee the independence of the judiciary, international and regional standards recommend that decisions on the appointment and promotion of judges be taken by a judicial council or an equivalent body independent of the legislative and executive branches of power. International and regional mechanisms have made similar recommendations.

49. The procedure for the selection, appointment and promotion of judges should be based on objective criteria previously established by law or by the competent authority. Decisions concerning the selection and careers of judges should be based on merit, having regard to the qualifications, skills and capacities of the candidates, as well as to their integrity, independence and impartiality. In the selection of judges, there should be no discrimination against judges or candidates for judicial office on any grounds, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, sexual orientation or other status. The requirement that a candidate for judicial office must be a national of the country concerned should not, however, be considered discriminatory.

50. In a thematic report on the guarantees for judicial independence (see A/HRC/11/41, paras. 23–34), the Special Rapporteur took note of the variety of existing systems for the

[39] See opinion No. 10 of the Consultative Council of European Judges, para. 42; and European Network of Councils for the Judiciary, resolution on self-governance for the judiciary: balancing independence and accountability, adopted at its General Assembly, held from 21 to 23 May 2008 in Budapest, para. 2.

[40] See Inter-American Commission on Human Rights, "Guarantees for the independence of justice operators", para. 243.

[41] See opinion No. 10 of the Consultative Council of European Judges, para. 43.

[42] See the Kyiv Recommendations on Judicial Independence, para. 2.

selection and appointment of judges worldwide, and raised general concerns over the involvement of the legislative or executive branches of power in judicial appointments.[43]

51. The election of judges by parliament is sometimes seen as providing greater democratic legitimacy, but it may lead to the politicization of judicial appointments, with political considerations prevailing over objective criteria set out in international and regional standards (merit, qualifications, integrity, sense of independence and impartiality, etc.).

52. In cases in which constitutional or legislative provisions prescribe that the Head of State, the Government or the legislative branch of power formally appoints or promotes judges, regional standards provide that the judicial council or an equivalent independent authority, such as a qualification commission, should be authorized to make recommendations or express opinions that the relevant appointing authorities follow in practice.[44]

53. The responses to the questionnaire show that States have elaborated different procedures for the appointment and promotion of judges, which can be divided into two main categories: elective systems, in which judges are elected by parliament,[45] and direct appointment systems. In direct appointment systems, the appointing body can be the President of the Republic/Head of State,[46] the Government[47] or the judicial council itself.[48] In most parliamentary systems, the Head of State is bound by a proposal from the judicial council, parliament or a combination of both. In some countries, the President of the Republic retains the discretionary power not to follow the advice of the judicial council.[49]

54. In many countries, judges are selected on the basis of national competitive examinations,[50] whereas in others, judges are selected from experienced practitioners.[51] Information concerning judicial vacancies should be made publicly available. The Special Rapporteur has underscored that competitive examinations conducted, at least partly, in a written and anonymous manner can serve as an important tool in the selection process (see A/HRC/11/41, para. 30).

## B. Court administration and budget control

55. There are no clearly established standards with regard to the competences of judicial councils in relation to court administration and budget control. Some regional standards recommend that judicial councils be entrusted with general responsibilities with regard to the administration of the court system and/or the allocation of budgetary resources to the various courts,[52] while others only provide that such councils should be consulted by the other State powers on these issues.[53]

56. The Special Rapporteur considers that entrusting judicial councils with general competences in relation to court administration and budget control constitutes an essential

[43] Similar concerns have been raised by the Venice Commission in its opinion No. 403/2006 on judicial appointments, paras. 7–17.

[44] See opinion No. 10 of the Consultative Council of European Judges, para. 49; Council of Europe Committee of Ministers, recommendation CM/Rec(2010)12, para. 47; and the Kyiv Recommendations on Judicial Independence, para. 23.

[45] Costa Rica, El Salvador and Slovenia.

[46] E.g. Czechia, Estonia, Greece, Liberia, Norway and Slovakia.

[47] Australia, Denmark and Sweden.

[48] E.g. Bosnia and Herzegovina, Croatia, Mongolia and Morocco.

[49] Lithuania.

[50] Algeria, Belgium, Portugal, Serbia and Sweden.

[51] Ireland, Sweden and the United Kingdom of Great Britain and Northern Ireland.

[52] Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, principles 36–37; opinion No. 10 of the Consultative Council of European Judges, paras. 76–79; and the Kyiv Recommendations on Judicial Independence, para. 6.

[53] European Charter on the Statute of Judges, art. 1.8; and the revised Universal Charter of the Judge, art. 2-3.

tool to safeguard the independence of the judiciary. The rationale behind the transfer of managerial functions from the Ministry of Justice or the Supreme Court to the judicial council is to reduce external interference, especially from the executive branch, in judicial affairs. The management and administration of the budget allocated to the court system should be entrusted directly to the judiciary or an independent body responsible for the judiciary, such as a judicial council (see A/HRC/11/41, paras. 43 and 101). The Venice Commission considered that decisions on the allocation of funds to courts "must be taken with the strictest respect for the principle of judicial independence" and recommended that the judiciary be provided with "an opportunity to express its views about the proposed budget to parliament, possibly through the judicial council".[54]

57. In some of the countries that responded to the questionnaire, judicial councils have been entrusted with general responsibilities regarding court administration and budget control. In Latvia, for example, the judicial council participates in the development of the policies and strategies of the judicial system, as well as the improvement of the organization of work of the judiciary.

58. In cases in which administrative functions are the responsibility of the highest judicial body, the Special Rapporteur has advocated the separation of administrative and jurisdictional functions, so as to enable the judiciary to concentrate fully on the latter. In a report on El Salvador, for example, the Special Rapporteur recommended that the Supreme Court of Justice relinquish some of the administrative functions currently entrusted to it in favour of another institution, such as the judicial council (see A/HRC/23/43/Add.1, para. 106).

59. Judicial councils should operate in a transparent way, and should be accountable for their activities in the field of court administration and budget control. Transparency is an essential factor in the trust that citizens have in the functioning of the judicial system and a guarantee against the danger of political influence or the perception of self-interest, self-protection and cronyism within the judiciary. Extended financial powers for a council imply its accountability not only vis-à-vis the executive and the legislature, but also vis-à-vis the courts and the public.[55] When judicial councils are endowed with budgetary powers, they must be accountable for the use of the funds to the allocating body by presenting periodical reports to fiscal authorities in which they detail the use of their budgetary resources.

## C. Disciplinary proceedings and accountability

60. International and regional standards recognize that individual judges may be subject to disciplinary proceedings and penalties, up to and including removal from office, for sufficiently serious misconduct, for example "incapacity or behaviour that renders them unfit to discharge their duties".[56]

61. The responsibility for disciplinary proceedings against judges should be vested in an independent authority (such as a judicial council) or a court. Some standards explicitly provide that the independent authority competent to hear disciplinary cases and to take a decision on disciplinary measures should be composed primarily of judges.[57] In order to prevent allegations of corporatism and guarantee a fair disciplinary procedure, this authority should also include members from outside the judicial profession, but in no case should such persons be members of the legislative or executive branches of the State. Both the Special Rapporteur (see A/HRC/11/41, paras. 60–61; and A/HRC/26/32, paras. 91–93) and the Human Rights Committee (see general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 20) have stressed that the

[54] See Venice Commission, "Report on the independence of the judicial system, part I: the independence of judges" (Strasbourg, Council of Europe, March 2010), para. 55.

[55] See opinion No. 10 of the Consultative Council of European Judges, para. 75.

[56] Basic Principles on the Independence of the Judiciary, principle 18.

[57] Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA region, principle 36; opinion No. 10 of the Consultative Council of European Judges, para. 64; and the revised Universal Charter of the Judge, art. 7-1.

involvement of members of the executive branch of power (Head of State, Minister of Justice or any other representative of the political authorities) in the disciplinary body is de facto incompatible with the principle of the independence of the judiciary.

62. In order to guarantee a fair disciplinary procedure, some international standards expressly provide that the competence to receive disciplinary complaints and conduct disciplinary investigations and the competence to adjudicate cases of judicial discipline should be vested in separate branches of a judicial council or in different authorities.[58]

63. Disciplinary proceedings should provide the accused judges with all the procedural guarantees set out in article 14 of the International Covenant on Civil and Political Rights, including the right to defend themselves in person or with the assistance of a legal counsel of their choice. Decisions of the disciplinary body should be reasoned and subject to appeal before a competent court.

64. Some of the responses to the questionnaire show that the responsibility for disciplinary proceedings against judges is vested in the judicial council[59] or equivalent independent body.[60] In other countries, all disciplinary proceedings are handled by domestic courts,[61] while in others domestic courts only deal with disciplinary proceedings against justices of the highest courts.[62]

65. Some of the mechanisms used at the national level to suspend or remove judges raise concerns in the light of existing standards concerning the independence of the judiciary. In Hungary, for example, the right to decide upon the dismissal of a judge lies with the President of the Republic. In Liberia, judges may be removed by the Parliament, and the National Bar Association may de facto suspend a judge from office by withdrawing his or her licence to practise law.

## VI. Composition of judicial councils

66. There is no standard model that a democratic country is bound to follow in setting up its judicial council, so long as its composition is such as to guarantee its independence and to enable it to carry out its functions effectively.[63] However, there is a tendency at the international level for judicial councils to have a mixed composition, and for a majority of members to be judges elected by their peers.

67. A mixed composition "would present the advantages both of avoiding the perception of self-interest, self-protection and cronyism and of reflecting the different viewpoints within society, thus providing the judiciary with an additional source of legitimacy".[64] It reduces the risk of a sort of esprit de corps that may affect its decision-making process. Those responsible for the administration of justice extend beyond judges and magistrates.

68. When the composition of the council is mixed, it is desirable that a fair balance is struck between members of the judiciary and other ex officio or elected members. If the proportion of judges is too high, this could create "a risk of corporatism and insulate the council from any external oversight".[65]

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[58] See opinion No. 10 of the Consultative Council of European Judges, para. 64; and the Kyiv Recommendations on Judicial Independence, paras. 5 and 26.

[59] E.g. in Azerbaijan, Bahrain, Croatia, Georgia, Mauritania, Morocco, Portugal and Togo.

[60] Office of the Disciplinary Counsel (Bosnia and Herzegovina); Committee for Judges and Magistrates (Malta); Judicial Disciplinary Committee (Republic of Korea); and the National Disciplinary Offence Board (Sweden).

[61] Bosnia and Herzegovina, Costa Rica, Czechia, Denmark, El Salvador, Estonia, Jordan, Lithuania, Nepal, Norway, Philippines, Poland and Northern Ireland.

[62] Sweden.

[63] See Venice Commission, opinion No. 403/2006 on judicial appointments, para. 23.

[64] See opinion No. 10 of the Consultative Council of European Judges, para. 19.

[65] See, for example, Venice Commission, opinion No. 779/2014 on the seven amendments to the Constitution of "the former Yugoslav Republic of Macedonia" concerning, in particular, the Judicial

69. In the majority of countries that responded to the questionnaire, judicial councils have a mixed composition of judges and non-judges. In some countries, they are composed exclusively of judges.[66]

**Judge members**

70. In the vast majority of States that responded to the questionnaire, judges constitute the majority of members of the judicial council; only in a few cases, do they constitute a minority of the council members.[67]

71. There is no consensus at the international level as to which levels of the judiciary should be represented in a judicial council. Earlier legal standards recommended that judge members be selected from the higher ranks of the judiciary,[68] whereas more recent instruments advocate for the selection of judges "from all levels of the judiciary and with respect for pluralism within the judiciary".[69] In practice, in many countries, high-level judges constitute the majority of the judge members of the judicial council.[70]

**Non-judge members**

72. As regards the non-judge members of judicial councils, regional instruments provide that they may comprise members of the legal profession, including law professors, eminent jurists and members of the Bar, and citizens of acknowledged reputation and experience. In order to protect the judiciary from external interference, a number of regional instruments expressly provide that lay members of judicial councils cannot be active politicians or members of parliament, the Government or the administration.

73. The Special Rapporteur considers that the participation of members who are not part of the judiciary can provide added value to the work of judicial councils, and may be justified by the need to avoid the risks of "corporatism" and to facilitate democratic oversight of the quality and impartiality of justice. Given the trend to judicialize broad social areas, the Special Rapporteur also considers that it would be appropriate to include professionals from areas other than law (e.g. experts in management, finances or social sciences) in the membership of councils.

74. The State practice concerning lay members of judicial councils is extremely varied. In the vast majority of countries that responded to the questionnaire, judicial councils include lay members chosen among law professors, eminent jurists, members of the legal profession, and citizens of acknowledged status. In some countries, the Head of State or President of the Republic[71] and members of the Government, usually the Minister of Justice,[72] and of parliament[73] participate in the work of the council, usually ex officio.

**Selection methods**

75. The Special Rapporteur considers it essential that members of a judicial council, whether judges or not, be selected on the basis of their competence, experience, understanding of judicial life, capacity for discussion and culture of independence, on the basis of an objective, fair and transparent process in which "the judiciary and other parties directly linked with the justice system must have a substantial say with respect to selecting

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Council, the competence of the Constitutional Court and special financial zones, 13 October 2014, para. 76.

66 Bahrain, Hungary and Oman.

67 Andorra, Norway, Philippines and Portugal.

68 See, for example, the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, principle 15.

69 See Council of Europe Committee of Ministers, recommendation CM/Rec(2010)12, para. 27. See also opinion No. 10 of the Consultative Council of European Judges, para. 27; and the Kyiv Recommendations on Judicial Independence, para. 7.

70 E.g. Japan and Mexico.

71 Italy.

72 Côte d'Ivoire, Mauritania, Montenegro, Nepal, Serbia and Turkey.

73 Croatia, Montenegro and Serbia.

and appointing the members of such a body" (see A/HRC/11/41, para. 29). The application of these criteria seeks to avoid, as far as possible, the politicization of judicial councils, as political control of these institutions would ultimately lead towards the opposite effect to that intended — namely, a deterioration of judicial independence. Selection and appointment methods must prevent factual powers and networks with particular and/or hidden agendas from controlling or influencing the decision-making process, guaranteeing full transparency so as to generate awareness of this risk.

76. The selection of judge members of judicial councils can be done through elections or, for a limited number of members (such as the President of the Supreme Court or court of appeal), ex officio. It is for the State authorities to develop appropriate selection procedures guaranteeing the widest representation of the judiciary at all levels. In order to insulate judicial councils from external interference, politicization and undue pressure, international standards discourage the involvement of political authorities, such as parliament, or the executive at any stage of the selection process. The interference of the judicial hierarchies in the process should also be avoided.

77. The responses to the questionnaire show that States have developed different procedures for the selection of judge members of judicial councils. In most cases, judge members are elected by their peers. However, in some countries, judge members are elected by the President of the Republic[74] or the legislative[75] or executive branch.[76]

78. Regional instruments provide limited guidance with regard to the selection of non-judge members. This is a matter that has largely been left to the discretion of States, which have to strike a fair balance between the need to insulate the judiciary from external pressure and the need to avoid the negative effects of corporatism within the judiciary.[77] As a general rule, non-judge members should not be appointed by the executive branch; it is also preferable that they are not appointed by the legislative branch. If elected by parliament, regional standards provide that non-judge members should be elected by a qualified majority, necessitating significant opposition support.[78]

79. The responses to the questionnaire show that, in many countries, the appointment of non-judge members is carried out by the legislative bodies,[79] often by a qualified majority. In other countries, lay members are formally elected by the Head of State[80] or by the executive branch.[81] In some countries, for example in Peru, non-judge members are elected by non-political authorities, such as the Bar Association, professional associations and universities.

**Chair of a judicial council**

80. With regard to the selection of the Chair of a judicial council, both the Consultative Council of European Judges and the Venice Commission recommend that he or she be an impartial person who is not close to political parties.[82] In parliamentary systems in which the President or Head of State has only formal powers, it is considered permissible to appoint the Head of State as the Chair of the council. However, there are different approaches as regards the selection of the Chair in other systems, such as semi-presidential systems. In general terms, the Consultative Council of European Judges recommends that the Chair should be elected by the council itself and should be a judge, whereas the Venice

[74] Turkey.
[75] Poland and Serbia.
[76] Denmark and Sweden.
[77] See Venice Commission, opinion No. 403/2006 on judicial appointments, para. 27.
[78] See opinion No. 10 of the Consultative Council of European Judges, para. 32; and Venice Commission, opinion No. 403/2006 on judicial appointments, para. 32.
[79] E.g. Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Italy, Mauritania, Montenegro, Portugal, Serbia, Slovakia (three members), Slovenia, Sweden and Turkey.
[80] Algeria, Georgia (one member), Portugal (two members), Slovakia (three members) and Togo.
[81] Denmark, Estonia and Slovakia (three members).
[82] See opinion No. 10 of the Consultative Council of European Judges, para. 33; and Venice Commission, opinion No. 403/2006 on judicial appointments, para. 35.

Commission considers that, in order to avoid possible corporatist tendencies within the council, it would be preferable for the Chair to be elected among the non-judicial members of the council. In a number of mission reports, the Special Rapporteur recommended that the presidency of the council should be exercised by one of its judge members (see, for example, A/HRC/23/43/Add.1, para. 113 (a)). Both the Special Rapporteur and the Inter-American Commission on Human Rights have expressed the view that the Chief Justice or President of the Supreme Court should not be appointed as the Chair of a judicial council (see, for example, A/HRC/17/30/Add.3, para. 94 (i)).[83]

81. The responses to the questionnaire show that State practice relating to the appointment of the Chair of a judicial council is extremely heterogeneous. In some parliamentary systems, the President of the Republic or the Head of State is Chair of the council.[84] In another group of countries, the Chair is appointed by the council itself among its members.[85] In some cases, the Minister of Justice is Chair,[86] often with no right to vote; whereas in others, legislation expressly provides that the Minister cannot be elected as president of the council.[87] In some countries, the Chief Justice or President of the Supreme Court is also the Chair of the council, and holds both positions simultaneously.[88]

82. There are no established principles in regional mechanisms concerning the number of members of judicial councils and the duration of their mandates. These matters are left to the discretion of States, which should define the number of councillors and the duration of their mandates taking into account, inter alia, the size of their judicial systems and, consequently, the number of tasks to be carried out. Similarly, it is up to States to decide whether members of the council should sit as full-time or part-time members.

83. One of the responsibilities of judicial councils is to protect judges from external political influence. In order to guarantee the continuity of a council's functions, its members should not be replaced at the same time or renewed following parliamentary elections. In particular, it would be inconsistent with the principle of the independence of the judiciary to allow for a complete renewal of the composition of a judicial council following parliamentary elections. In his country mission to Poland, the Special Rapporteur expressed the view that the early termination of all the judicial members of the Council would lead to the creation of a new National Council of the Judiciary dominated by political appointees, in breach of existing standards on the independence of the judiciary and the separation of powers (see A/HRC/38/38/Add.1, para. 70).

## VII. Conclusions

84. Judicial councils play an essential role in guaranteeing the independence and the autonomy of the judiciary. The underlying rationale for their creation is the need to insulate the judiciary and judicial career processes from external political pressure, mainly from the executive branch. In addition to their primary function of safeguarding judicial independence, a growing number of judicial councils have been entrusted with far-reaching powers to promote the efficiency and quality of justice and rationalize the administration of justice, court management and budgeting.

85. The Special Rapporteur has shown that there is no one-size-fits-all model of judicial council. Each judicial governing body originates from a legal system with distinct historical, cultural and social roots; the specific role of each body varies from one country to the other, in accordance with the specific problems that its establishment is supposed to address. In the present report, the Special Rapporteur has shown that the number of judicial councils has increased greatly in recent decades: current estimates suggest that more than

[83] See also the Inter-American Commission on Human Rights, "Guarantees for the independence of justice operators", para. 246.

[84] Algeria, Italy and Malta.

[85] Montenegro and Slovenia.

[86] Bulgaria and Turkey.

[87] Montenegro.

[88] Denmark, Nepal, Oman, Philippines, Portugal, Togo and Northern Ireland.

70 per cent of the countries in the world have some form of judicial council or equivalent independent and autonomous body. However, this is an area lacking in statistical data at the global level, making it challenging to assess global trends.

86. The Special Rapporteur has also shown that, despite the increase in the number of judicial councils in all regions of the world, there is a lack of international legal standards at the international level specifically devoted to the role, composition and functions of judicial councils. The Basic Principles on the Independence of the Judiciary do not include any provision specifically devoted to judicial councils. The most comprehensive efforts to develop minimum standards relating to the creation, membership and role of judicial councils have been undertaken in Europe, under the aegis of the Council of Europe.

87. The large number of responses to the Special Rapporteur's questionnaire allows general trends and good practices to be identified in relation to the establishment, composition and functions of judicial councils or equivalent independent and autonomous bodies set up at the national level to guarantee the independence of the judiciary.

# VIII. Recommendations

88. **In the light of the existing international and regional standards, and based on the contributions received from States and non-State actors, the Special Rapporteur would like to offer the following recommendations relating to the establishment, composition and functions of judicial councils. These recommendations do not purport to identify an ideal model of judicial council, but rather seek to identify common principles for ensuring the independence of such bodies, where they exist, and their effectiveness in the discharge of their functions as guarantors of judicial independence.**

### Development of international standards

89. **Given the absence of detailed legal standards at the international level on the role of judicial councils as guarantors of judicial independence, the Special Rapporteur recommends that a comprehensive set of principles be developed under the auspices of the United Nations to identify common principles and good practices in relation to the establishment, composition and functioning of such councils.**

90. **These minimum standards may serve as a useful reference tool for all member States, particularly those that have not yet established a judicial council. Such standards should be developed through an open and transparent process involving not only member States, but also national human rights institutions, civil society, and judges and their representative organizations. Existing international standards relating to judicial councils and the recommendations of international and regional bodies should be taken into account in the development and implementation of this new set of principles.**

### Establishment of judicial councils

91. **The Special Rapporteur considers that the establishment of an independent body in charge of protecting and promoting the independence of the judiciary constitutes good practice, and encourages those States that do not have a judicial council or a similar independent institution to consider establishing one, except in those cases in which judicial independence is traditionally ensured by other means.**

92. **In order to guarantee their independence from the executive and legislative branches and ensure effective self-governance for the judiciary, judicial councils should be established under the Constitution in those countries having a written Constitution, or in the equivalent basic law or constitutional instrument in other countries. The Constitution or the equivalent basic law should include detailed provisions regarding the setting-up of such a body and its composition and functions, and guarantee the autonomy of the council vis-à-vis the executive and legislative branches of power.**

93. **Judicial councils should be provided with adequate human and financial resources. In particular, they should have their own premises, a secretariat and a sufficient number of qualified staff to perform their functions independently and autonomously.**

**Duties and responsibilities of judicial councils**

94. **Judicial councils should be endowed with the widest powers in the field of selection, promotion, training, professional evaluation and discipline of judges. They should have general responsibilities with regard to the administration of the court system and/or the allocation of budgetary resources to the various courts.**

95. **In order to avoid excessive concentration of power in one judicial body and the perception of corporatism, the Special Rapporteur considers it good practice to establish different independent bodies competent for specific aspects of judicial administration (e.g. selection, promotion, training and discipline of judges). The composition of these bodies should reflect the particular task entrusted to them.**

96. **Considering the broad and important functions of judicial councils, they should be held accountable, both institutionally and legally, by society and the appropriate State institutions.**

**Selection and appointment of judges**

97. **Decisions on the appointment and promotion of judges should be taken through a transparent process by a judicial council or an equivalent body independent of the legislative and executive branches of powers.**

98. **The procedure for the selection and appointment of judges should be based on objective criteria previously established by law or by the competent authority. Decisions concerning the selection and careers of judges should be based on merit, having regard to the qualifications, skills and capacities of the candidates, as well as to their integrity, sense of independence and impartiality. Competitive examinations conducted, at least partly, in a written and anonymous manner can serve as an important tool in the selection process.**

99. **The Special Rapporteur considers that the involvement of the legislative or executive branches of power in judicial appointments may lead to the politicization of judicial appointments. In cases in which judges are formally appointed by the Head of State, the Government or the legislative branch, the appointment should be made on the basis of the recommendation of the judicial council that the relevant appointing authorities follow in practice.**

**Court administration and budget control**

100. **Without prejudice to the existing responsibilities of the executive and legislative branches of power, the Special Rapporteur is of the view that judicial councils should be entrusted with general responsibilities with regard to the administration of the court system, the preparation of the judicial budget and the allocation of budgetary resources to the various courts.**

**Disciplinary proceedings**

101. **The responsibility for disciplinary proceedings against judges should be vested in an independent authority composed primarily of judges, such as a judicial council or a court.**

102. **The competence to receive disciplinary complaints and conduct disciplinary investigations and the competence to adjudicate cases of judicial discipline should be vested in separate branches of the judicial council or in different authorities.**

103. **These authorities may include members from outside the judicial profession (lawyers, academics, members of civil society), but in no case should such persons be members of the legislative or executive branches.**

104. **Disciplinary proceedings should provide the accused judges with all the procedural guarantees set out in article 14 of the International Covenant on Civil and Political Rights, including the right to defend themselves in person or with the assistance of a legal counsel of their choice.**

105. **Decisions of the disciplinary body should be reasoned and subject to appeal before a competent court.**

**Composition of judicial councils and selection of their members**

106. **All the appointment processes for the councils should be transparent and participative so to avoid and prevent corporatism and appropriation of the process by the de facto powers.**

107. **Judicial councils should include judges among its members. To avoid the risk of corporatism and self-interest, the councils may also include lay members, for example lawyers, law professors, jurists, Bar members, as well as citizens of acknowledged reputation and experience. Active politicians and members of the legislative or executive branches of power cannot simultaneously serve on a judicial council. The judge members of a council should be elected by their peers following methods guaranteeing the widest representation of the judiciary at all levels. Certain members of a council, for example the President of the Supreme Court, can be selected ex officio.**

108. **The election of lay members of a council should be entrusted to non-political authorities. When elected by parliament, lay members should be elected by a qualified majority, necessitating significant opposition support. In no case should they be selected or appointed by the executive branch.**

109. **The selection and appointment of the members of a judicial council should take place in an open and transparent way in order to eliminate the risks of political interference and appropriation of the process by the de facto powers, and prevent allegations of corporatism.**

110. **States should enact appropriate measures to ensure a gender perspective in the composition of a council and promote gender parity within judicial bodies, in particular, through a reduction in gender-based barriers to promotion and career advancement that persist within the justice sector.**

111. **When members of the executive branch, for example the Minister of Justice, participate in the work of a council as ex officio members, appropriate measures should be developed to ensure their independence from any potential interference.**

112. **The Chair of a council should be held by an impartial person who does not have any political affiliation. In parliamentary systems in which the President or Head of State has only formal powers, it is permissible to appoint him or her as the Chair of the council. In all other cases, the Chair should be elected by the council itself among its judge members. Neither the Chief Justice, the President of the Supreme Court nor the Minister of Justice should be appointed as the Chair of a judicial council.**

# Annex

## List of respondents

### States

Argentina

Algeria

Andorra

Armenia

Australia

Azerbaijan

Bahrain

Belgium

Bolivia (Plurinational State of)

Bosnia and Herzegovina

Bulgaria

Colombia

Côte d'Ivoire

Croatia

Czechia

Denmark

El Salvador

Estonia

Georgia

Germany

Greece

Honduras

Hungary

Ireland

Italy

Lithuania

Malta

Mauritania

Mauritius

Montenegro

Morocco

Norway

Oman

Paraguay

Poland

Portugal

Republic of Korea

Russian Federation

Senegal

Serbia

Slovenia

Spain

Sweden

Switzerland

Togo

Tunisia

Turkey

United Kingdom of Great Britain and Northern Ireland (Northern Ireland and Scotland)

Uzbekistan

### National human rights institutions

Institution of Human Rights Ombudsman (Bosnia and Herzegovina)

Ombudsman's Office (Costa Rica)

Danish Institute for Human Rights

Public Defender's Office (Georgia)

National Commission for Human Rights (Greece)

National Human Rights Commission (India)

National Centre for Human Rights (Jordan)

Ombudsman (Latvia)

Independent National Commission on Human Rights (Liberia)

National Human Rights Commission (Mexico)

National Human Rights Commission (Nepal)

Commission on Human Rights (Philippines)

Commissioner for Human Rights (Poland)

Ombudsman (Portugal)

Slovak National Centre for Human Rights

National Human Rights Commission (Togo)

### Civil society organizations

Association of Judges (Armenia)

Association of Magistrates (Plurinational State of Bolivia)

Association of Judges (Croatia)

Association of Judges (Japan)

Association of Judges (Norway)

Association of Magistrates and Judges (Panama)

Association of Judicial Magistrates (Paraguay)

Association of Judges (Serbia)

European Networks of Councils for the Judiciary

International Commission of Jurists

## Intergovernmental organizations

Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe

European Commission for Democracy through Law (Venice Commission)